

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 10 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

MANDUKHBHAI C PANDYA

Appearance:

MR RM VIN for Petitioner

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/04/98

ORAL JUDGEMENT

This is the defendant's second appeal.

2. The plaintiff respondent filed a suit for declaration that the decision of the Railway Administrative communicated through letters dated 28.3.73 and 29.1.75 refusing the claim and request of the plaintiff respondent for correction of his date of birth and altering the date of birth in his service record from

17.10.1918 to 9.8.1926 is arbitrary and against the principles of natural justice, without jurisdiction, null and void.

3. The plaintiff respondent filed a suit claiming that his correct date of birth was 9.8.1926 and it was wrongfully recorded in his service record as 20.10.1918. The request of the respondent for correction of his date of birth in his service record was turned down through the impugned order. Consequently declaratory suit was filed.

4. The suit was resisted on variety of grounds. The main ground was that in view of para 145 of Indian Railways Establishment Code Volume I, the date of birth of a railway employee has to be determined by the Railway Administrative and not by the Civil Court. In this way, the jurisdiction of the Civil Court to determine the date of birth of the plaintiff respondent was challenged.

5. This defence was not accepted by the Trial Court as well as the First Appeal Court. Both the courts below relying upon Exh.60, the service card of the plaintiff respondent maintained by his previous employer, Exh.41 School Certificate of the respondent, Exh.42, School Leaving Certificate of the respondent and Exh.114, Copy of Horoscope of the respondent coupled with the oral statement of the respondent and his witnesses concluded that the real and correct date of birth of the respondent was 9.8.1926. Consequently, the declaratory suit was decreed and the impugned order was held to be illegal null and void. An appeal was filed which was also dismissed. Hence this second appeal.

6. The following substantial question of law was formulated in the second appeal:

" Whether the Civil Court would have jurisdiction to direct the General Manager, Western Railway, to correct the date of birth of a railway employee as per its decision when under the provision contained in Rules 145 of the Indian Railway Establishment Code. The decision as regards alternation of birth-date of a railway employee is conferred upon him or on the chief personnel Officer, if so empowered. "

7. Learned Counsel for the parties were heard at length. It is not disputed that during pendency of this appeal the respondent has retired. It is also not disputed that in compliance of order of this court on civil application all monetary benefits, emoluments etc.

so also the pension was paid to the respondent. Now, the question is whether the Civil Court is competent to decide the date of birth of the respondent or not.

8. Section 9 of the Code of Civil Procedure provides that the Courts shall subject to the provisions herein contained have jurisdiction to try all suits of a civil nature excepting the suits of which their cognisance either expressly or impliedly is barred.

9. It is clear from this section that the jurisdiction of the Civil Code to decide all suits of civil nature is there except in those cases where such cognisance is barred either expressly or impliedly by any statute or law. Para 145 of the Indian Railway Establishment Code Volume I confers powers upon the Railway Administration to determine the age of an employe as provided thereunder but it does not anywhere say nor it could say that the jurisdiction of the Civil court is barred. The dispute between the employee and the Railway Administration regarding the correct date of birth is certainly a dispute of civil nature and a suit involving such dispute could be cognisable in civil court. The Trial Court therefore committed no error of law in entertaining the suit.

10. So far as the findings of the two courts below are concerned they are based on proper appraisal of four material documents Exh.60, 41, 42 and 114 referred to above and is further corroborated from the oral evidence of the plaintiff respondent. Thus on the factual side no interference in this second appeal is called for.

11. In view of the above discussions, the substantial question is answered in the affirmative and finding the appeal to be without merit, it is liable to be dismissed and his hereby dismissed. No order as to costs.

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